IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 55 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MEHSANA DISTRICT COOPERATIVE MILK PRODUCERS UNION LTD

Appearance:

MR MANISH R BHATT for Petitioner

Mr Manish J Shah for Mr. J.P.Shah Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 05/09/2000

ORAL JUDGEMENT

Per Dharmadhikari,C.J:-

This reference, at the instance of the department, for the assessment year 1978-79 has been made under section 256 (1) of the Income tax Act, 1961 to answer the following questions:

(i) Whether on the facts and in the circumstances of the case, the tribunal has been right in law in holding that as far as the cost of fencing is concerned, the assessee is entitled to depreciation at the rate applicable to plant?

(ii) Whether on the facts and in the cicumstances of the case, the `work in progress' could be treated as part of the capital for the purpose of section 80J of the I.T.Act, 1961?

So far as question No.1 is concerned, as per the decision of the Supreme court in CIT vs. Gwalior Rayon Silk Mills Ltd. , 196 ITR 149, roads laid within the factory premises have been treated necessary adjuncts to the factory building and treated as "building" for the purpose of depreciation.

Our attention was also invited to the decision of the Bombay High court in the case of CIT vs. Caltex Oil Refinery, 102 ITR 260 where "fencing" as a required protected measure by the Petroleum Rules for the Refinery has been held to be covered within the meaning of protected plant.

Fencing around oil refinery is not comparable with fencing to dairy which is the business of the assessee. Fencing provided to the building in which dairy is housed can be treated as part of the building. Relying on the decision of the Supreme court in Gwalior Rayon (supra),question No.1 is answered against the assessee and in favour of the revenue.

Question No.2 is whether the "work in progress" can be treated as part of the capital employed for the purpose of section 80J of the Income tax Act. The question raised is also squarely answered in favour of the assessee and against the revenue in the Supreme court decision in the case of CIT vs. Alcock Ashdown and Company Limited, 224 ITR 353. Decision in Cibatul Limited , reported in 115 ITR 879 of this court, has been approved in the decision of the Supreme court in the case of Alcock Ashdown (supra) . The decision of the Tribunal

is based on the decision of this court in Cibatul (supra). The Supreme court has held that the amount representing value of the plant and machinery yet to be installed and the cost of workshop under construction can be taken into account in depreciating the capital employed. Thus, value of "work in progress" can be treated as part of capital employed for the purpose of section 80J. Relying on the decision of the Supreme court in Alcock Ashdown (supra), we answer question No.2 in favour of the assessee and against the revenue.

In the result, the Reference is disposed of but without any order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh